

1 Tatyana Evgenievna Drevaleva  
2 3015 Clement St., Apt. 204,  
3 San Francisco, CA, 94121  
4 415-954-2116, [tdrevaleva@gmail.com](mailto:tdrevaleva@gmail.com)

5 Plaintiff in Pro Per

6

7 THE UNITED STATES DISTRICT COURT  
8 FOR NORTHERN CALIFORNIA

9

10

11 ) Case No. 3:18-cv-03748-JCS  
12 Tatyana E. Drevaleva )  
13 Plaintiff, ) Notice of Motion; Second Motion to  
14 vs. ) Strike Defendants' June 04, 2021 Answer  
15 1) The U.S. Department of Veterans ) to My Original June 25, 2018 Complaint  
16 Affairs ) in Its Entirety or Partially,  
17 2) Mr. Denis Richard McDonough in his ) F.R.C.P. Rule 12(f);  
18 capacity as a Secretary of the U.S. ) Memorandum of Points and Authorities;  
19 Department of Veterans Affairs ) Declaration; Proposed Order.  
20 810 Vermont Avenue, NW, )  
21 Washington, D.C. 20420 )  
22 Defendant )  
23 Facility: ) Date: July 30, 2021  
24 New Mexico VA Healthcare System ) Time: 09:30 AM  
25 1501 San Pedro Drive, S.E. ) Location: Courtroom F – 15th Floor  
26 Albuquerque, NM, 87108 ) 450 Golden Gate Avenue,  
27 ) San Francisco, CA 94102  
28 ) Judge: The Hon. Chief Magistrate  
29 ) Judge Joseph C. Spero

TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL ON RECORD.

NOTICE IS HEREBY GIVEN that on 07/30/2021 at 09:30 AM or as soon thereafter as the matter may be heard in Courtroom F at the 15th Floor of the District Court for Northern California located at 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiff Pro Se Tatyana Drevaleva will move the Court the second time for an Order that strikes Defendants' June 04, 2021 Answer to my Original June 25, 2018 Complaint.in its entirety. I am making this Motion pursuant to the F.R.C.P, Rule 12(f.)

As an alternative, I am asking the District Court to strike parts of Defendants' June 04, 2021 Answer pursuant to the F.R.C.P, Rule 12(f.)

Said the Second Motion to Strike shall be based on this Notice, the attached Second Motion to Strike Defendants' June 04, 2021 Answer to my Original June 25, 2018 Complaint in its entirety pursuant to the F.R.C.P, Rule 12(f), or, as an alternative, to strike parts of Defendants' June 04, 2021 Answer, the attached Memorandum of Points and Authorities, the attached Declaration, the pleadings and papers on file, and on such additional matters as may be presented to the Court prior to or at the hearing.

Dated: June 19, 2021 Signed: Tatyana Drevaleva

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# MEMORANDUM OF POINTS AND AUTHORITIES

**Objection No. 16.** 5:14-6:4. Read my June 25, 2018 Complaint, “On May 17, 2017, I worked a night shift together with my co-worker Mrs. Nadya Das who is a Russian speaking lady and a Monitor Technician at 5D. I said to Nadya about my plan to go to Russia to perform an IVF procedure. On that night, Ms. Dunkelberger was absent. I was told that she would be absent for two weeks, and she would return back to work only at the end of May 2017. I spoke to Assistant Manager Mrs. Phil Johnson on that night. I said to him that I had spoken to Ms. Dunkelberger about my plan to go to Russia for an IVF procedure, and I told Mr. Johnson exactly the same things that I had told Ms. Dunkelberger (that I was 50 yo, that I didn’t have children, that I performed approximately 8 IUI procedures with donor’s sperm, that I spent 2.5 years in Russia for my medical examination and treatment, that I underwent multiple gynecological surgeries, that I performed 3 attempts of IVF, that I had an embryo that is frozen in Russia, that I had a right for a free of charge IVF attempt in Russia, that I had only three pills of Jeanine left, that I couldn’t refill these pills in the United States, I needed to go to Russia to perform a free IVF attempt, I couldn’t pay \$15 thousand U.S. dollars for one IVF attempt in the United States, I requested documentation from my Russian OB/GYN that I am in Registry of the Ministry of Health of the Novosibirsk Region of Russia for a free IVF attempt, that I didn’t have time to get this document translated in the United States but I will translate it in Russia and email it to Ms. Dunkelberger and Mr. Johnson. Also, I gave my verbal consent that I allow Mrs. Nadya Das to preliminary translate this document before I have a chance to officially translate it in Russia.”

Read Zack's June 04, 2021 Answer, page 4, lines 16-22, "Defendants admit that Plaintiff worked from 11:30 p.m. on May 17, 2017, to 8 a.m. on May 18, 2017. Defendants admit that Plaintiff worked with Ms. Das that night and told Ms. Das about her plans to go to Russia the next day for a medical reason. Defendants admit that Ms. Dunkelberger was absent that night. Defendants admit that Plaintiff spoke with Mr. Johnson that night about her plans to return to Russia the next day for medication and in vitro fertilization. Defendants are without sufficient

1 knowledge to admit or deny the remaining factual allegations in this paragraph, including the  
 2 details of the conversation with Mr. Johnson and, on that basis, deny those allegations.”

3 My objection.

4 1) I am respectfully asking the Court to strike Defendants’ libelous assertion that I  
 5 worked for eight hour shifts and that, see page 4, lines 16-17, I worked “from 11:30  
 6 p.m. on May 17, 2017, to 8 a.m. on May 18, 2017.” In fact, I worked for twelve  
 7 hour shifts, and I worked from May 17, 2017 from approximately 19:00 PM to May  
 8 18, 2017 to approximately 07:30 AM. Please, notice that the New Mexico VA Health  
 9 Care System never paid overtime compensation for working in excess of eight hours  
 10 per day. Therefore, I am respectfully asking the court to strike Defendants’ frivolous  
 11 assertion that I worked “from 11:30 p.m. on May 17, 2017, to 8 a.m. on May 18,  
 12 2017.”

13 2) I am respectfully asking the Court to strike Defendants’ sentence, page 4, lines 20-  
 14 22, “Defendants are without sufficient knowledge to admit or deny the remaining  
 15 factual allegations in this paragraph, including the details of the conversation with  
 16 Mr. Johnson and, on that basis, deny those allegations” for the following reasons:  
 17 a) It is undisputed that Ms. Das was my Russian speaking co-worker  
 18 b) It is undisputed that Ms. Das was appointed as a Monitor Technician at 5D, or, to  
 19 be precise, as a Medical Instrument Technician, see (**ER 03748 Vol. 1, page 275**)

20 **From:** Dunkelberger, Carla  
 21 **Sent:** Monday, November 20, 2017 10:43 AM  
 22 **To:** Shafer, Amy V. <[Amy.Shafer@va.gov](mailto:Amy.Shafer@va.gov)>  
 23 **Cc:** Rincon, Donald M. <[Donald.Rincon@va.gov](mailto:Donald.Rincon@va.gov)>; Dunkelberger, Carla <[Carla.Dunkelberger@va.gov](mailto:Carla.Dunkelberger@va.gov)>; Salazar-Ruiz,  
 24 Andrew V. <[Andrew.Salazar-Ruiz@va.gov](mailto:Andrew.Salazar-Ruiz@va.gov)>; Bonin, Allean R. <[AlleanRanetta.Bonin@va.gov](mailto:AlleanRanetta.Bonin@va.gov)>  
 25 **Subject:** RE: Request for documents

26 1. Organizational chart – see attached  
 27 2. Breakdown of organizational unit for position in question (Medical Instrument Technician). EEO categories  
 28 unknown.  
 a. Tatyana Drevaleva, Medical Instrument Technician, GS-649-07, full time.  
 b. Nadzeya Das, Medical Instrument Technician. GS-0649-06, full time.  
 c. David Williams, Medical Instrument Technician. GS-0649-06, full time.  
 d. David Trujillo, Medical Instrument Technician, GS-0649-05, full time  
 e. Vacant Position, Medical Instrument Technician, GS-0649, full time.

1           3) I am respectfully asking the Court to strike Zack's statement, page 4, lines 17-18,  
 2           "Defendants admit that Plaintiff worked with Ms. Das that night and told Ms. Das  
 3           about her plans to go to Russia the next day **for a medical reason**" because I declare  
 4           under the penalty of perjury and under the Federal laws that on May 17, 2017 I said to  
 5           Ms. Das about my plans to go to Russia **to refill a prescription of my hormonal**  
 6           **pills and to perform an In-Vitro Fertilization procedure.**

7           4) I declare under the penalty of perjury and under the Federal laws that on May 17,  
 8           2017 Mr. Phil Johnson told me that Ms. Dunkelberger was out of her office, and that  
 9           she would be back to her office **only in two weeks** that was approximately the end of  
 10           May 2017.

11           5) I am respectfully asking the Court to strike Defendants' sentence, page 4, lines 19-22,  
 12           "Defendants admit that Plaintiff spoke with Mr. Johnson that night **about her plans**  
 13           **to return to Russia the next day for medication and in vitro fertilization.**  
 14           Defendants **are without sufficient knowledge** to admit or deny the remaining factual  
 15           allegations in this paragraph, including the details of the conversation with Mr.  
 16           Johnson and, on that basis, deny those allegations" for the following reasons:  
 17           a) Because I can demonstrate by the preponderance of the evidence that I said to Mr.  
 18           Johnson about all of the following, see Mr. Johnson's EEO Interrogatory (**ER**  
 19           **03748 Vol. 1, 218-219**):  
 20           (i)       That I had "**one pill left**"<sup>1</sup>  
 21           (ii)      That I was flying to Russia next day  
 22           (iii)     That I was flying to Russia to get In-Vitro Fertilization done  
 23           (iv)     That I was 50 yo  
 24           (v)      That I always wanted to have children  
 25           (vi)     That "it could be [my] last chance"  
 26           (vii)    That on May 17, 2017 Mr. Johnson gave me an OPM 71 form

27  
 28           <sup>1</sup> Mr. Johnson erred. On May 17, 2017, I had three pills left.

- 1 (viii) That on May 17, 2017 Mr. Johnson asked me to fill out this form
- 2 (ix) That on May 17, 2017 Mr. Johnson asked me to provide my medical
- 3 documentation
- 4 (x) That on May 17, 2017 Mr. Johnson didn't say that the medical
- 5 documentation should be on English language
- 6 (xi) That on May 17, 2017 Mr. Johnson didn't say that the medical
- 7 documentation on English language should be submitted prior to
- 8 approval of the leave of absence
- 9 (xii) That on May 17, 2017 Mr. Johnson said that he could not approve my
- 10 request for a Leave Without Pay
- 11 (xiii) That on May 17, 2017 Mr. Johnson said that he would turn the [medical]
- 12 documentation
- 13 (xiv) That on May 17, 2017 Mr. Johnson said that, if this was that important, I
- 14 should go.

15 Read Mr. Johnson's EEO Interrogatory (**ER 03748 Vol. 1, 218-219**), "The complainant  
16 came into the office, after business hours, on May 17, 2017 stating s/he had one pill left and  
17 was flying to Russia the next day to have Invitro Fertilization done. The complainant also  
18 stated his/her age to be 50 and that s/he had always wanted to have children and "this may be my  
19 last chance." I handed the complainant the OPM71 paper work and stated that this must be filled  
20 out and supporting documentation in English from the doctor must also be supplied. At this time  
21 I stated to the complainant that I could not approve Leave Without Pay but I would turn in the  
22 documentation and if this was that important then s/he should go."

23 Also, I declare under the penalty of perjury and under the Federal laws that on May 17,  
24 2017, I said to Mr. Johnson:

- 25 1) that I had spoken to Ms. Dunkelberger about my plan to go to Russia for an IVF  
26 procedure
- 27 2) that I told Mr. Johnson exactly the same things that I had told Ms. Dunkelberger:
  - 28 (i) that I was 50 yo

1 (ii) that I didn't have children  
2 (iii) that I performed approximately 8 IUI procedures with donor's sperm  
3 (iv) that I spent 2.5 years in Russia for my medical examination and treatment  
4 (v) that I underwent multiple gynecological surgeries  
5 (vi) that I performed 3 attempts of IVF  
6 (vii) that I had an embryo that is frozen in Russia  
7 (viii) that I had a right for a free of charge IVF attempt in Russia  
8 (ix) that I had only three pills of Jeanine left  
9 (x) that I couldn't refill these pills in the United States  
10 (xi) that I needed to go to Russia to perform a free IVF attempt  
11 (xii) that I couldn't pay \$15 thousand U.S. dollars for one IVF attempt in the  
12 United States  
13 (xiii) that I requested documentation from my Russian OB/GYN  
14 (xiv) that I am in Registry of the Ministry of Health of the Novosibirsk Region of  
15 Russia for a free IVF attempt  
16 3) that I didn't have time to get this document translated in the United States but I will  
17 translate it in Russia and email it to Ms. Dunkelberger and Mr. Johnson  
18 4) Also, I gave my verbal consent that I allow Mrs. Nadya Das to preliminary translate  
19 this document before I have a chance to officially translate it in Russia.

20 Read (**ER 03748 Vol. 1, 218-219**),

21 and the circumstances surrounding this event? *The complainant came into the*  
22 *office, after business hours, on May 17, 2017 stating s/he had one pill left and was*  
23 *flying to Russia the next day to have Invitro Fertilization done. The complainant*  
*also stated his/her age to be 50 and that s/he had always wanted to have children*  
*and "this may be my last chance". I handed the complainant the OPM71 paper*

24 *work and stated that this must be filled out and supporting documentation in*  
25 *English from the doctor must also be supplied. At this time I stated to the*  
26 *complainant that I could not approve Leave Without Pay but I would turn in the*  
*documentation and if this was that important then s/he should go.*

1           **Objection No. 17.** 6:5-10. Read my June 25, 2018 Complaint, “Because on that night  
 2 Ms. Dunkelberger was absent, I asked Mr. Johnson’s permission to go to Russia for the  
 3 mentioned above purposes. The exact words of Mr. Johnson were, “If you need to go – go!”  
 4 Therefore, he verbally allowed me to go to Russia. He gave me a form to fill out and request a  
 5 LWOP. I filled this form out, and I requested a LWOP from May 18, 2017 to July 07, 2017.  
 6 Unfortunately, I don’t have a copy of that form. I put the completed form under the door of Mr.  
 7 Johnson’s office.”

8           Read Zack’s Answer, from page 4, line 23 to page 5, line 4, “Defendants admit that  
 9 Plaintiff asked Mr. Johnson’s permission to go to Russia. Defendants deny that Plaintiff was  
 10 given verbal permission to go to Russia or take two or more weeks of leave and that any leave  
 11 was approved. Defendants admit that Plaintiff completed a form requesting leave without pay  
 12 from May 18, 2017, to July 7, 2017, and slid the form under Mr. Johnson’s door. Defendants  
 13 aver that Plaintiff submitted no medical documentation with the form and that the request was  
 14 not approved prior to Plaintiff’s departure for Russia. Defendants respectfully refer the Court to  
 15 the document for a full and accurate statement of its contents. To the extent that Plaintiff’s  
 16 characterization of the content of this document is inconsistent with the text of the document,  
 17 Defendants deny the allegations. Defendants are without sufficient knowledge to admit or deny  
 18 the remaining factual allegations in this paragraph and, on that basis, deny those allegations.”

19           **My objection.**

20           I am respectfully asking the Court to strike Zack’s statement, page 4, line 23,  
 21 “Defendants admit that Plaintiff asked Mr. Johnson’s permission to go to Russia” because this  
 22 statement is incomplete. The correct statement is, see my Complaint, page 6, lines 5-6, “**Because**  
 23 **on that night Ms. Dunkelberger was absent,** I asked Mr. Johnson’s permission to go to Russia  
 24 **for the mentioned above purposes.**” Therefore, Zack failed to specify that:

25           1) On May 17, 2017 I asked Mr. Johnson to allow me to go to Russia because on that  
 26           night Ms. Dunkelberger was out of her office  
 27           2) On May 17, 2017 I asked Mr. Johnson to allow me to go to Russia for the following  
 28           purposes:

- 1 a) To refill a prescription of my hormonal pills because I had only three pills left,  
2 and I couldn't obtain the pills in the United States
- 3 b) To perform an In-Vitro Fertilization procedure.

4

5 I am respectfully asking the Court to strike Zack's sentence, page 4, line 24-25,  
6 "Defendants deny that Plaintiff was given verbal permission to go to Russia or take two or more  
7 weeks of leave and that any leave was approved" for the following reasons:

- 8 1) Because I didn't say to Mr. Johnson that I would take two weeks off. I specifically  
9 said to Mr. Johnson that I would take six weeks.
- 10 2) On May 17, 2017, Mr. Johnson verbally approved my request for a leave. Read Mr.  
11 Johnson's EEO Interrogatory (ER 03748 Vol. 1, 219), "and if this was that  
12 important then s/he should go."

13 *English from the doctor must also be supplied. At this time I stated to the  
14 complainant that I could not approve Leave Without Pay but I would turn in the  
documentation and if this was that important then s/he should go.*

15

16 I am respectfully asking the Court to strike Zack's phrase, page 4, lines 25-26,  
17 "Defendants admit that Plaintiff completed a form requesting leave without pay from May 18,  
18 2017, to July 7, 2017, and slid the form under Mr. Johnson's door" for the following reasons:

- 19 1) Because Zack failed to specify that it was an OPM 71 form
- 20 2) Because Zack failed to specify that:
  - 21 a) on May 17, 2017 Mr. Johnson gave me this form OPM 71, and
  - 22 b) he asked me to fill it out, and
  - 23 c) he specifically asked me to request a Leave Without Pay, and
  - 24 d) he never asked me to request any form of a paid leave of absence
- 25 3) Because it the door was not "Mr. Johnson's" door. It was the door of the Manager's  
26 office (Manager Ms. Dunkelberger and Assistant Manager Mr. Johnson.)

1 I am respectfully asking the Court to strike Zack's sentence, page 4, line 27, "Defendants  
 2 aver that Plaintiff submitted no medical documentation with the form...."

3 I admit that I didn't submit any medical documentation with the form. Actually, I was  
 4 not required to submit any medical documentation in support to my Request for a Leave  
 5 Without Pay. See *JOSEPH L. BURNS v. KIRSTJEN NIELSEN, Secretary, U.S. Department of*  
 6 *Homeland Security*, EP-17-CV-00264-DCG, UNITED STATES DISTRICT COURT  
 7 WESTERN DISTRICT OF TEXAS EL PASO DIVISION (January 28, 2020) (Doc. No. 310,  
 8 February 14, 2021) (Exhibit 327),

9       **"A. Improper medical Inquiry Claim**

10 The RA incorporates by reference many of the prohibitions on employment  
 11 discrimination of Title I of the Americans with Disabilities Act ("ADA"), including [42 U.S.C.]  
 12 § 12112(d)(4)(A)'s medical inquiry prohibition. *Taylor v. City of Shreveport*, 798 F.3d 276,283  
 13 (5th Cir. 2015). Section 12112(d)(4)(A) provides:

14       A covered entity shall not require a medical examination and shall not make  
 15 inquiries of an employee as to whether such employee is an individual with a  
 16 disability or as to the nature or severity of the disability, unless such examination  
 17 or inquiry is shown to be job-related and consistent with business necessity.

18       A plaintiff, however, need not establish that he has a disability to prevail on a claim for  
 19 an improper medical inquiry under this ADA provision. *Taylor*, 798 F.3d at 284; see also  
 20 *Williams v. FedEx Corp. Servs*, 849 F.3d 889, 901 (10th Cir. 2017) ("The provision applies to all  
 21 employees, and a plaintiff need not prove that he is disabled.").

22       Before addressing the merits of Burns's medical inquiry claim, the Court addresses two  
 23 procedural matters. The magistrate judge found that (a) Burns's Complaint alleged a claim for  
 24 improper medical inquiry, id at 25, and (b) Burns exhausted his administrative remedies on his  
 25 medical inquiry claim, R&R at 24. The Secretary objects to these findings. Def. 's Objs. to R&R  
 26 at 16. Below, the Court addresses each in turn."

27       "..., an improper medical examination or inquiry "may constitute a form of employment  
 28 discrimination under the ADA." *Taylor*, 798 F.3d at 282 (citing§ 12112(d)(1)); see also

1        **Fredenburg v. Contra Costa Cty. Dept. of Health Servs., 172 F.3d 1176, 1181 (9th Cir. 1999)**

2        ("Subsection (d)(1) provides a general prohibition against using medical examinations to  
 3        discriminate; subsections (d)(2) through (d)(4) provide more detailed guidelines as to what is and  
 4        is not allowed."); *Harrison v. Benchmark Elecs. Huntsville, Inc.*, 593 F.3d 1206, 1213 (11th Cir.  
 5        2010) ("[O]ne way a disabled plaintiff could meet his *prima facie* case of discrimination [under §  
 6        12112(d)(1)] would be by showing that his employer discriminated against him by ... making  
 7        a[n] ... improper medical inquiry in violation of subsection (d)[,]" which includes, among  
 8        others, § 12112(d)(4)(A).)

9  
 10       Therefore, an employer may be liable for making medical inquiries directed at its  
 11       employees under either § 12112(d)(4)(A) or § 12112(d)(1). Whereas § 12112(d)(4)(A) does not  
 12       require plaintiff to assert that he "has a disability to contest an allegedly improper medical  
 13       inquiry or medical examination," *Taylor*, 198 F.3d at 284, § 12112(d)(1) does, *Harrison*, 593  
 14       F.3d at 1213 ("[B]ecause § 12112(d)(1) expressly incorporates § 12112(a)'s prohibition of  
 15       discrimination against 'qualified individuals [on the basis of] disabilit[y],' ... to maintain an action  
 16       for discrimination itself, a plaintiff must be disabled under the ADA.".)

17  
 18       I am repeating that, despite I didn't submit my medical documentation with my form  
 19       OPM 71 on May 17, 2017, I notified Mr. Johnson that:

20       1) I would receive this medical documentation within the next few hours,  
 21       2) that this documentation would be on Russian language,  
 22       3) that I would not be able to translate this documentation into English using a certified  
 23       translator prior to my departure to Russia on May 18, 2017  
 24       4) that Ms. Dunkelberger specifically told me that I didn't have a right to translate my  
 25       medical documentation into English myself  
 26       5) that Ms. Dunkelberger specifically told me that only a certified translator had a right  
 27       to translate my medical documentation from Russian into English  
 28       6) that I had three pills left, and that I needed to take the pills during my trip to Russia

1       7) that I would leave to Russia on May 18, 2017 because I have three pills left and  
2       because I can't afford to miss a pill, and because I can't obtain these pills in the  
3       United States  
4       8) that I would email my medical documentation on Russian language as soon as I  
5       receive it within the next few hours  
6       9) that, as soon as I arrive at Russia, I would find a certified translator, I would translate  
7       my medical documentation into English, and I would email my medical  
8       documentation on English language to both Ms. Dunkelberger and Mr. Johnson  
9       10) that, until I find a certified translator in Russia, and until I email my medical  
10       documentation on English language to both Ms. Dunkelberger and Mr. Johnson, I  
11       authorized my Russian speaking co-worker Ms. Nadya Das to translate this medical  
12       documentation for both Ms. Dunkelberger and Mr. Johnson.

13  
14       I am respectfully asking the Court to strike Zack's sentence, page 4, lines 27-28,  
15 "Defendants aver that ... the request was not approved prior to Plaintiff's departure for Russia."

16       I am repeating Mr. Johnson's EEO Interrogatory (**ER 03748 Vol. 1, 219**), "and if this  
17 was that important then s/he should go."

18       *English from the doctor must also be supplied. At this time I stated to the*  
19 *complainant that I could not approve Leave Without Pay but I would turn in the*  
*documentation and if this was that important then s/he should go.*

20       Also, see the November 18, 2020 Memorandum of the 9<sup>th</sup> Circuit in Appeal No. 19-  
21 16395, page 4, "Drevaleva alleged that she was denied leave for her alleged disability and  
22 terminated even though she made a proper request that was approved by her supervisor."  
23 Please, notice that Defendants didn't file any Petition for Rehearing and didn't attempt to reverse  
24 the 9<sup>th</sup> Circuit's ruling that I had left my job with a permission of my Supervisor.

25       Therefore, because Defendants didn't attempt to reverse the ruling of the 9<sup>th</sup> Circuit,  
26 Defendants are not eligible to re-assert that I had left my job without permission.

27       I am respectfully asking the Court to take a Judicial Notice of my May 18, 2017 Request  
28 for Leave Without Pay (**ER 03748 Vol. 1, page 287.**)

02 6/28/17

## Request for Leave or Approved Absent

1. Name (Last, first, middle) <i>Drevaleva Tatyana E</i>	2. Employee or Social Security Number (Enter only the last 4 digits of the Social Security Number (SSN)) [REDACTED]			
3. Organization <i>Albuquerque VAMC, 5D</i>				
4. Type of Leave/Absence (Check appropriate box(es) below)	Date From	Date To	Time From	Time To
<input type="checkbox"/> Accrued Annual Leave				
<input type="checkbox"/> Restored Annual Leave				
<input type="checkbox"/> Advanced Annual Leave				
<input type="checkbox"/> Accrued Sick Leave				
<input type="checkbox"/> Advanced Sick Leave				
Purpose:	<input type="checkbox"/> Illness/injury/incapacitation of requesting employee <input type="checkbox"/> Medical/dental/optical examination of requesting employee <input type="checkbox"/> Care of family member, including medical/dental/optical examination of family member, or bereavement <input type="checkbox"/> Care of family member with a serious health condition <input type="checkbox"/> Other			
<input type="checkbox"/> Compensatory Time Off				
<input type="checkbox"/> Other Paid Absence (Specify in Remarks)				
<input checked="" type="checkbox"/> Leave Without Pay	05.18.17-07.07.17			
5. Family and Medical Leave	If annual leave, sick leave, or leave without pay will be used under the Family and Medical Leave Act of 1993, please provide the following information:  I hereby invoke my <input type="checkbox"/> entitlement to Family and Medical Leave for:  <input type="checkbox"/> Birth/Adoption/Foster Care <input type="checkbox"/> Serious health condition of spouse, son, daughter, or parent <input type="checkbox"/> Serious health condition of self			
6. Remarks:	<i>To solve my health issues in Russia.</i>			
7. Certification: I hereby request leave/approved absence from duty as indicated above and certify that such leave/absence is requested for the purpose(s) indicated. I understand that I must comply with my employing agency's procedures for requesting leave/approved absence (and provide additional documentation, including medical certification, if required) and that falsification on this form may be grounds for disciplinary action, including removal.				
7a. Employee Signature <i>[Signature]</i>	7b. Date			05.17.2017
8a. Official Action on Request: <input type="checkbox"/> Approved	<input checked="" type="checkbox"/> Disapproved			(If disapproved, give reason. If annual leave, initiate action to reschedule.)
8b. Reason for Disapproval:				
8c. Supervisor Signature <i>[Signature]</i>	8d. Date			5-19-2017
PRIVACY ACT STATEMENT				
Section 6311 of Title 5, United States Code, authorizes collection of this information. The primary use of this information is by management and your payroll office to approve and record your use of leave. Additional disclosures of the information may be: to the Department of Labor when processing a claim for compensation regarding a job connected injury or illness; to a State unemployment compensation office regarding a claim; to Federal Life Insurance or Health Benefits carriers regarding a claim; to a Federal, State, or local law enforcement agency when your agency becomes aware of a violation or possible violation of civil or criminal law; to a Federal agency when conducting an investigation for employment or security reasons; to the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of leave administration; or the General Services Administration in connection with its responsibilities for records management.				
Public Law 104-134 (April 26, 1996) requires that any person doing business with the Federal Government furnish a social security number or tax identification number. This is an amendment to Title 31, Section 7701. Furnishing the social security number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application. If your agency uses the information furnished on this form for purposes other than those indicated above, it may provide you with an additional statement reflecting those purposes.				

Office of Personnel Management  
5 CFR 630

Local Reproduction Authorized

OPM Form 71

Rev. September 2009

Formerly Standard Form (SF) 71

Previous editions unusable

000168

1 Please, notice the following facts:

2 1) I submitted my Request for a Leave Without Pay on the form OPM 71

3 2) I submitted my Request for a Leave Without Pay on May 17, 2017

4 3) The OPM 7 form contained a variety of **paid** leave options:

4. Type of Leave/Absence (Check appropriate box(es) below)	Date		Time		I
	From	To	From	To	
<input type="checkbox"/> <b>Accrued Annual Leave</b>					
<input type="checkbox"/> <b>Restored Annual Leave</b>					
<input type="checkbox"/> <b>Advanced Annual Leave</b>					
<input type="checkbox"/> <b>Accrued Sick Leave</b>					
<input type="checkbox"/> <b>Advanced Sick Leave</b>					
<b>Purpose:</b>	<input type="checkbox"/> Illness/injury/incapacitation of requesting employee <input type="checkbox"/> Medical/dental/optical examination of requesting employee <input type="checkbox"/> Care of family member, including medical/dental/optical examination of family member, or bereavement. <input type="checkbox"/> Care of family member with a serious health condition <input type="checkbox"/> Other				
<input type="checkbox"/> <b>Compensatory Time Off</b>					
<input type="checkbox"/> <b>Other Paid Absence</b> (Specify in Remarks)					

19 1) Accrued Annual Leave  
 20 2) Restored Annual Leave  
 21 3) Advanced Annual Leave  
 22 4) Accrued Sick Leave  
 23 5) Advanced Sick Leave:

24 Purpose:

25 a) Illness/injury/incapacitation of requesting employee  
 26 b) Medical/Dental/Optical examination of requesting employee  
 27 c) Care of family member, including medical/dental/optical examination of family member, or bereavement

- 1 d) Care of family member with a serious health condition
- 2 e) Other
- 3 6) Compensatory Time Off
- 4 7) Other Paid Absence.

5

6 Please, take a judicial notice of a material fact of the case that, despite I was **a full time**

7 appointee (**ER 03748 Vol. 2, page 502**), and despite I was eligible for an Advanced Annual

8 Leave and for an Advance Sick Leave, and despite these leave options were listed in the OPM 71

9 form, both Ms. Dunkelberger and Mr. Johnson never asked me to request an Advanced Annual

10 Leave and/or an Advance Sick Leave, and both Ms. Dunkelberger and Mr. Johnson specifically

11 stated that my only option was a Leave Without Pay (a LWOP.)

12 Please, also notice the AFGE Master Agreement, Article 35, Section 16 - Family and

13 Medical Leave Act (FMLA) (**ER 03748 Vol. 3, page 870**),

14 A. "Maternity and Paternity Leave

15 1. **Under FMLA and this Agreement**, bargaining unit employees are entitled to 16

16 weeks of LWOP during any 12 month period for the following reasons:

17 a. Birth of a son or daughter and the care of such son or daughter; and,

18 b. Placement of a son or daughter for adoption or foster care.

19 2. Supervisors are encouraged to approve additional leave as circumstances warrant.

20

21 B. **Other family medical leave under FMLA and this Agreement**, bargaining unit

22 employees are entitled to 12 weeks of LWOP during any 12 month period for one or

23 more of the following reasons:

24 1. The care of a family member of the employee with a serious health condition.

25 Family member is defined as:

26 a. Spouse and parents of spouse;

27 b. Children, including adopted children; and,

28 c. Parents.

1           2. A serious health condition of the employee that makes the employee unable  
 2           to perform the functions of the position of such employee.”

4           Therefore, pursuant to the AFGE Master Agreement, Article 35, Section 16(B)(2), I was  
 5           entitled to 12 weeks of a LWOP for a serious health condition regardless whether or not I  
 6           worked at the VA for 12 months.

8           Please, also notice the AFGE Master Agreement, Article 35, Section 16 - Family and  
 9           Medical Leave Act (FMLA) (**ER 03748 Vol. 3, page 874**),

10           “I. The Department shall inform its employees of their entitlements and responsibilities  
 11           under FMLA, including the requirements and obligations of employees.”

13           Therefore, I am respectfully asking the Court to take a judicial notice of the following  
 14           material facts of the case.

16           **Material fact No. 1.**

17           On May 17, 2017, Mr. Johnson gave me an OPM 71 form and asked me to request a  
 18           leave Without Pay (a LWOP.) I followed instructions, and I requested a Leave Without Pay (a  
 19           LWOP), see (**ER 03748 Vol. 1, page 287.**)

<input checked="" type="checkbox"/> Leave Without Pay	05.18.17-07.17	required by
6. Remarks:	To solve my health issues in Russia.	

22           Please, notice that I didn't write “In-Vitro Fertilization” in my OPM 71 form, and I wrote  
 23           “To solve my health issues in Russia.” I did it because I didn't know who would read the form,  
 24           and I was thinking about my privacy.

26           **Material fact No. 2.**

27           Dr. Prince denied my Request for a LROP on May 19, 2017.

28           See (**ER 03748 Vol. 1, page 287.**)

8d. Date
5-19-2017

1                   **Material fact No. 3.**

2                   Dr. Prince did not identify **even one reason** for the denial of my Request for a LWOP in  
 3 violation of the OPM 71 form that specifically said, "**If disapproved, give reason.** If annual  
 4 leave, initiate action to reschedule."

5                   See (ER 03748 Vol. 1, page 287.)

6                   ***(If disapproved, give reason. If annual leave,  
 7                   Initiate action to reschedule.)***

8b. Reason for Disapproval:

11                   **Material fact No. 4.**

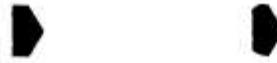
12                   Ms. Dunkelbeger mailed a letter to my home postal address in Albuquerque, NM on June  
 13 12, 2017 which was **outside** of the **five business day** mandatory period that was imposed by 29  
 14 CFR § 825.300(b)(1.) See (ER 03748 Vol. 1, 290.)

15                   **Read** 29 CFR § 825.300(b),

16                   (1) When an employee requests FMLA  
 17 leave, or when the employer acquires knowledge  
 18 that an employee's leave may be for an FMLA-  
 19 qualifying reason, **the employer must notify the**  
 20 **employee of the employee's eligibility to take**  
 21 **FMLA leave within five business days,**  
 22 **absent extenuating circumstances."**



24                   **Material fact No. 5.** Ms. Dunkelberger mailed this letter to my home postal address in  
 25 Albuquerque, NM while knowing that I would not receive this letter because at that time I was in  
 26 Russia. This letter was unclaimed, and it was returned back to the Agency. See (ER 03748 Vol.  
 27 1, page 291.)

1 USPS.com® - USPS Tracking® Results  
2Page 1 of 4  
12 6/28/173 **USPS Tracking® Results**  
4FAQs (<http://faq.usps.com/?articleId=220900>)6 **Track Another Package +**  
78 Remove  
910 **Tracking Number:** 70141200000081360083  
11**In-Transit**12 **Product & Tracking Information**

See Available Actions

13 **Postal Product:** Features:  
14 Certified Mail™

16 DATE &amp; TIME STATUS OF ITEM LOCATION

17 June 13, 2017, 11:12 am Notice Left (No  
18 Authorized Recipient  
Available)19  
20 We attempted to deliver your item at 11:12 am on June 13, 2017 in ALBUQUERQUE, NM 87108  
21 and a notice was left because an authorized recipient was not available. You may arrange  
22 redelivery by using the Schedule a Redelivery feature on this page or may pick up the item at the  
Post Office indicated on the notice beginning June 14, 2017. If this item is unclaimed by June 28,  
2017 then it will be returned to sender.

23 June 13, 2017, 2:52 am Departed USPS Facility ALBUQUERQUE, NM 87101

24 June 12, 2017, 9:01 pm Arrived at USPS Facility ALBUQUERQUE, NM 87101

27 <https://tools.usps.com/go/TrackConfirmAction?tRef=fullpage&tLc=2&text28777=&tLabel...> 6/21/2017  
28 **000172**

1       **Material fact No. 6.** The Agency never emailed me Dr. Prince's denial of my Request  
2 for a LWOP. Read Ms. Cormier's October 09, 2018 Proposed Order to the Motion to Dismiss  
3 my Original June 25, 2018 Complaint No. 3:18-cv-03748-JCS (**ER 03748 Vol. 2, page 414,**  
4 **lines 16-17**), "Meanwhile, plaintiff's request for leave without pay had been denied and a letter  
5 to that effect was sent to her mailing address, but not emailed to her."

6

7       **Material fact No. 7.** On June 30, 2017, the Agency terminated my employment (**ER**  
8 **03748 Vol. 1, pages 293-294.**) In its Termination Letter, the Agency did not notify me that my  
9 Request for a LWOP had been denied. See (**ER 03748 Vol. 1, pages 293.**)

10      2. The Associate Director, Patient Care Services, has recommended that you be terminated from  
11 your position for failure to qualify during your probationary period. Your termination is due to  
attendance issues.

12      3. The effective date of your termination will be June 30, 2017. The decision to terminate you  
13 immediately in lieu of a two (2) week notice is due to your absent without leave (AWOL) status  
since May 21, 2017. You must properly clear the facility, turn in any government property to your  
14 supervisor and clear any indebtedness prior to the release of your final paycheck.

15

16       **Material fact No. 8.** I learned the first time that Dr. Prince denied my Request for a  
17 LWOP only during the Mediation with Ms. Dunkelberger on September 07, 2017.

18

19       Also, I am asking the Court to take a Judicial Notice of the following statute.

20       5 CFR § 630.1208 - Medical certification.

21       "(a) An agency may require that a request for leave under § 630.1203(a) (3) or (4) be  
22 supported by written medical certification issued by the health care provider of the employee or  
23 the health care provider of the spouse, son, daughter, or parent of the employee, as appropriate.  
24 An agency may waive the requirement for an initial medical certificate in a subsequent 12-  
25 month period if the leave under § 630.1203(a) (3) or (4) is for the same chronic or continuing  
26 condition.

27       (b) The written medical certification shall include -

28           (1) The date the serious health condition commenced;

- 1 (2) The probable duration of the serious health condition or specify that the  
2 serious health condition is a chronic or continuing condition with an unknown  
3 duration and whether the patient is presently incapacitated and the likely duration  
4 and frequency of episodes of incapacity;
- 5 (3) The appropriate medical facts within the knowledge of the health care  
6 provider regarding the serious health condition, including a general statement as  
7 to the incapacitation, examination, or treatment that may be required by a health  
8 care provider;
- 9 (4) For the purpose of leave taken under § 630.1203(a)(3) of this part -
  - 10 (i) A statement from the health care provider that the spouse, son,  
11 daughter, or parent of the employee requires psychological comfort and/or  
12 physical care; needs assistance for basic medical, hygienic, nutritional,  
13 safety, or transportation needs or in making arrangements to meet such  
14 needs; and would benefit from the employee's care or presence; and
  - 15 (ii) A statement from the employee on the care he or she will provide and  
16 an estimate of the amount of time needed to care for his or her spouse,  
17 son, daughter, or parent;
- 18 (5) For the purpose of leave taken under § 630.1203(a)(4), a statement that the  
19 employee is unable to perform one or more of the essential functions of his or her  
20 position or requires medical treatment for a serious health condition, based on  
21 written information provided by the agency on the essential functions of the  
22 employee's position or, if not provided, discussion with the employee about the  
23 essential functions of his or her position; and
- 24 (6) In the case of certification for intermittent leave or leave on a reduced leave  
25 schedule under § 630.1203(a) (3) or (4) for planned medical treatment, the dates  
26 (actual or estimates) on which such treatment is expected to be given, the duration  
27 of such treatment, and the period of recovery, if any, or specify that the serious  
28 health condition is a chronic or continuing condition with an unknown duration

1 and whether the patient is presently incapacitated and the likely duration and  
2 frequency of episodes of incapacity.

3 (c) The information on the medical certification shall relate only to the serious health  
4 condition for which the current need for family and medical leave exists. The agency may not  
5 require any personal or confidential information in the written medical certification other than  
6 that required by paragraph (b) of this section. If an employee submits a completed medical  
7 certification signed by the health care provider, the agency may not request new information  
8 from the health care provider. However, a health care provider representing the agency,  
9 including a health care provider employed by the agency or under administrative oversight of the  
10 agency, may contact the health care provider who completed the medical certification, with the  
11 employee's permission, for purposes of clarifying the medical certification.

12 (d) If the agency doubts the validity of the original certification provided under paragraph  
13 (a) of this section, the agency may require, at the agency's expense, that the employee obtain the  
14 opinion of a second health care provider designated or approved by the agency concerning the  
15 information certified under paragraph (b) of this section. Any health care provider designated or  
16 approved by the agency shall not be employed by the agency or be under the administrative  
17 oversight of the agency on a regular basis unless the agency is located in an area where access to  
18 health care is extremely limited - e.g., a rural area or an overseas location where no more than  
19 one or two health care providers practice in the relevant specialty, or the only health care  
20 providers available are employed by the agency.

21 (e) If the opinion of the second health care provider differs from the original certification  
22 provided under paragraph (a) of this section, the agency may require, at the agency's expense,  
23 that the employee obtain the opinion of a third health care provider designated or approved  
24 jointly by the agency and the employee concerning the information certified under paragraph (b)  
25 of this section. The opinion of the third health care provider shall be binding on the agency and  
26 the employee.

27 (f) To remain entitled to family and medical leave under § 630.1203(a) (3) or (4) of this  
28 part, an employee or the employee's spouse, son, daughter, or parent must comply with any

1 requirement from an agency that he or she submit to examination (though not treatment) to  
 2 obtain a second or third medical certification from a health care provider other than the  
 3 individual's health care provider.

4 (g) If the employee is unable to provide the requested medical certification before leave  
 5 begins, or if the agency questions the validity of the original certification provided by the  
 6 employee and the medical treatment requires the leave to begin, the agency shall grant  
 7 provisional leave pending final written medical certification.

8 (h) An employee must provide the written medical certification required by paragraphs  
 9 (a), (d), (e), and (g) of this section, signed by the health care provider, no later than 15 calendar  
 10 days after the date the agency requests such medical certification. If it is not practicable under  
 11 the particular circumstances to provide the requested medical certification no later than 15  
 12 calendar days after the date requested by the agency despite the employee's diligent, good faith  
 13 efforts, the employee must provide the medical certification within a reasonable period of time  
 14 under the circumstances involved, but no later than 30 calendar days after the date the agency  
 15 requests such medical certification.

16 (i) If, after the leave has commenced, the employee fails to provide the requested  
 17 medical certification, the agency may -

- 18 (1) Charge the employee as absent without leave (AWOL); or
- 19 (2) Allow the employee to request that the provisional leave be charged as  
 20 leave without pay or charged to the employee's annual and/or sick leave  
 21 account, as appropriate.

22 (j) At its own expense, an agency may require subsequent medical recertification on  
 23 a periodic basis, but not more than once every 30 calendar days, for leave taken for purposes  
 24 relating to pregnancy, chronic conditions, or long-term conditions, as these terms are used in the  
 25 definition of serious health condition in § 630.1202. For leave taken for all other serious health  
 26 conditions and including leave taken on an intermittent or reduced leave schedule, if the health  
 27 care provider has specified on the medical certification a minimum duration of the period of  
 28 incapacity, the agency may not request recertification until that period has passed. An agency

1 may require subsequent medical recertification more frequently than every 30 calendar days, or  
 2 more frequently than the minimum duration of the period of incapacity specified on the medical  
 3 certification, if the employee requests that the original leave period be extended, the  
 4 circumstances described in the original medical certification have changed significantly, or the  
 5 agency receives information that casts doubt upon the continuing validity of the medical  
 6 certification.

7 (k) To ensure the security and confidentiality of any written medical certification under §  
 8 630.1208 or 630.1210(h) of this part, the medical certification is subject to the provisions for  
 9 safeguarding information about individuals under subpart A of part 293 of this chapter.

10 [58 FR 39602, July 23, 1993, as amended at 61 FR 64453, Dec. 5, 1996; 65 FR 26487,  
 11 May 8, 2000; 65 FR 38409, June 21, 2000. Redesignated and amended at 76 FR 60704, 60705,  
 12 Sept. 30, 2011]"

13  
 14 Therefore, I am respectfully asking the Court to judicially notice that, pursuant to 5 CFR  
 15 § 630.1208:

16 1) It was **IMMATERIAL**:

17 a) Whether or not I provided my medical certification **whatsoever** before taking a  
 18 2017 trip to Russia. See 5 CFR § 630.1208(a), "An agency **may** require that a  
 19 request for leave under § 630.1203(a) (3) or (4) be supported by written medical  
 20 certification issued by the health care provider of the employee..." Please, notice  
 21 that the plain language of the statute has a word "**may**" which is **permissive** and  
 22 not mandatory. Please, notice that the plain language of 5 CFR § 630.1208(a)  
 23 doesn't contain a mandatory word "shall." Please, also notice that the plain  
 24 language of 5 CFR § 630.1208(a) says, "An agency **may waive the requirement**  
 25 **for an initial medical certificate**." Therefore, pursuant to 5 CFR § 630.1208(a), I  
 26 **did not** have a mandatory obligation to provide my medical certification to Ms.  
 27 Dunkelberger prior to taking my 2017 trip to Russia.

b) Whether or not I provided my medical certification on Russian or on English language prior or after my 2017 trip to Russia. Please, see 5 CFR § 630.1208(d), “If the agency doubts the validity of the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a second health care provider designated or approved by the agency concerning the information certified under paragraph (b) of this section.” Please, notice that Defendants confirmed in their June 04, 2021 Answer that I authorized Ms. Das to preliminary translate my medical document from Russian into English, see page 5, lines 8-9, “Defendants admit that Plaintiff asked and gave consent to Ms. Das to translate a document from Russian to English.”

c) **Whether or not** Ms. Dunkelberger, Mr. Johnson, Dr. Prince, or whoever else **approved** my Request for a Leave (any kind of a leave, not necessarily a Leave Without Pay) prior to my 2017 trip to Russia. See 5 CFR § 630.1208(g), “If the employee is unable to provide the requested medical certification before leave begins, or if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the agency shall grant provisional leave pending final written medical certification.” Please, notice that the plain language of 5 CFR § 630.1208(g) imposes **a mandatory obligation** (the word “**shall**”) on the Agency to grant me with a **provisional leave** pending final written medical certification. Please, notice that Defendants failed to follow **a mandatory obligation** to provide me with a provisional leave pending final written medical certification.

2) Defendants didn't have any right to place me on the Absent Without Leave (the AWOL) status starting **May 21, 2017**. See 5 CFR § 630.1208,

1                     “(i) If, after the leave has commenced, the employee fails to provide the  
 2                     requested medical certification, the agency may<sup>2</sup> -  
 3                         (1) Charge the employee as absent without leave (AWOL); or  
 4                         (2) Allow the employee to request that the provisional leave be  
 5                         charged as leave without pay or charged to the employee's annual  
 6                         and/or sick leave account, as appropriate.”

7  
 8                     Therefore, the Agency had a mandatory obligation to wait until I return back from  
 9                     Russia and afterwards to do either:

10                     1) To charge me with an AWOL  
 11                     2) To allow me to apply for any kind of a paid leave (Advanced Sick Leave, Advanced  
 12                         Annual Leave, Voluntary Leave Transfer Program, etc.)

13  
 14                     In fact, the Agency placed me on the AWOL status starting May 21, 2017 (ER 03748  
 15                     Vol. 1, pages 297-299) in violation of 5 CFR § 630.1208(i) and subsequently fired me (ER  
 16                     03748 Vol. 1, pages 293-294) without giving me a Notice and an opportunity to be heard.

17                     DREVALEVA, TATYANA E                     T&L 221 Telework Ind: None

Date	TW	Scheduled Tour	Tour Exceptions
Sun 14-May-17		07:30P-08:00A	
Mon 15-May-17		07:30P-08:00A	
Tue 16-May-17		07:30P-08:00A	
Wed 17-May-17		11:30P-08:00A	
Thu 18-May-17		Day Off	
Fri 19-May-17		Day Off	
Sat 20-May-17		Day Off	
Sun 21-May-17		07:30P-08:00A	07:30P-08:00A WP LWOP AWOL
INAPPROPRIATE LEAVE REQUEST			
Mon 22-May-17		07:30P-08:00A	07:30P-08:00A WP LWOP AWOL
INAPPROPRIATE LEAVE REQUEST			
Tue 23-May-17		07:30P-08:00A	07:30P-08:00A WP LWOP AWOL
INAPPROPRIATE LEAVE REQUEST			
Wed 24-May-17		Day Off	
Thu 25-May-17		Day Off	
Fri 26-May-17		Day Off	
Sat 27-May-17		Day Off	

28                     <sup>2</sup> Permissive, not mandatory.

1                   **Conclusion.**

2                   I am respectfully asking the Court to strike Zack's June 04, 2021 Answer it its entirety  
3 because it is unsworn and violates 28 U.S.C. § 1746. I am also asking to strike Zack's June 04,  
4 2021 Answer because it its entirety because it violates the F.R.C.P. Rule 11(b.) The June 04,  
5 2021 Answer is hearsay that is not supposed to be reviewed at all. As an alternative, I am asking  
6 the Court to partially strike Zack's June 04, 2021 Answer for the reasons specified above and  
7 below.

8                   Specifically, I am respectfully asking to strike Zack's statements that:

- 9                   1) **That I was not entitled for an FMLA** leave because **I didn't work at the VA for**  
10                   **12 months** because it is immaterial, see the AFGE Master Agreement, Article 35,  
11                   Section 16 - Family and Medical Leave Act (FMLA), Subdivision (B)(2.) Pursuant to  
12                   the FMLA and the AFGE Master Agreement, I was entitled to 12 weeks of an unpaid  
13                   leave per year **for a serious health condition** regardless **whether or not I worked at**  
14                   **the VAMC for 12 months.**
- 15                   2) That I didn't submit my medical certification **at all** prior on May 17, 2017 together  
16                   with my OPM 71 form because it is immaterial, see 5 CFR § 630.1208(a) and the 42  
17                   U.S.C. § **12112(d)(4)(A)**'s **medical inquiry prohibition**. *Taylor v. City of*  
18                   *Shreveport*, 798 F.3d 276,283 (5th Cir. 2015).
- 19                   3) That I didn't submit my medical certification **on English language** prior to my May  
20                   18, 2017 trip to Russia because it is immaterial, see 5 CFR § 630.1208(d)
- 21                   4) That **on May 19, 2017 Dr. Prince disapproved my Request for a LWOP** because it  
22                   is immaterial, see 5 CFR § 630.1208(g) (a mandatory obligation to give me a  
23                   provisional leave pending the final medical certification.)

24  
25                   I declare under the penalty of perjury and under the Federal laws that all foregoing is true  
26 and correct. Executed at San Francisco, CA on June 19, 2021.

27  
28                   Respectfully submitted,

1  
2 s/ Tatyana Drevaleva   
3  
4 Plaintiff Pro Se  
5  
6 June 19, 2021.  
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